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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,905	05/01/2002	Rudolf Ehrmaier	951/50010	4430

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EXAMINER

TO, TOAN C

ART UNIT PAPER NUMBER

3616

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/936,905

Applicant(s)

EHRMAIER ET AL.

Examiner

Toan C To

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-32 is/are pending in the application.
- 4a) Of the above claim(s) 13-21, 29, 31 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 22-28 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of species 1, figure 1, claims 12, 22-28, and 30 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. With respect to claims 12, and 26-28, the examiner agrees that claims 12, and 26-28 are generic to both species.
3. Claims 13-21, 29, 31-32 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

### *Drawings*

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "detection device" as recited in claim 1, and "gear selection device having a defined rest position" as recited in claim 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 12, 22-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, the specification merely describe "detection device to detect accident and swerving event of the vehicle", but fails to describe in details how the accident and swerving event are detected, and what device(s) is/are used to detect accident. It is noted that the sensors (22-30) are used to detect rotational speed of the wheel and yaw rate of the vehicle but not to detect accident or swerving event.

Further, with respect to claim 27, the specification does not describe in detail how the gear selection device is connected or arranged in relation with electric transmission control and an analyzing device. Therefore, it is not known how the gear selection device being directed out of the rest position in order to select a driving position desired by the driver and then being automatically return.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 12, 22-28, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitation "a detection device that detects one of an accident ...and generates a corresponding signal" as recited in claim 1 renders the claim indefinite for being unclear, since it is not known what element is referred to "detection device". According to the original disclosure, only the wheel speed sensors (22-28) and yaw sensor (30) are considered to correspond to "detection device", however, these sensors are used to detect rotational speed of the wheels and yaw rate of the vehicle but not to detect accident and swerving even of the vehicle.

Further, recitations "specific value" and "specific threshold" as recited in claims 12 and 28 render the claims indefinite for being unclear, since it is not known "specific value" and "specific threshold" in term of what, could they be "value" or "threshold" of degree of accident, rotational speed of the wheel, or yaw rate of the vehicle?

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 12, 22, 24, and 26-27, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Tabata et al (U.S. 6,077,190).

Tabata et al discloses a device for increasing security of the vehicle with the following: an automatic transmission (14); an electric transmission control (78) operatively coupled with the automatic transmission (14); a detection device comprising wheel speed sensors (86) to detect the rotational speed of the wheel and yaw rate sensor (83), and generating a corresponding signal; an analyzing device (82) that evaluates whether the signal reaches a specific value or exceeds a specific threshold, the analyzing device (82) causing the electric transmission control (78) to interrupt a positive engagement of the automatic transmission (14) when the specific value is reaches or the specific threshold is exceeded.

***Claim Rejections - 35 USC § 102/103***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 28 and 30, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious

Art Unit: 3616

over Tabata et al (U.S. 6,077,190). Tabata et al discloses a device for increasing security of the vehicle with the following: an automatic transmission (14); an electric transmission control (78) operatively coupled with the automatic transmission (14); a detection device comprising wheel speed sensors (86) to detect the rotational speed of the wheel and yaw rate sensor (83), and generating a corresponding signal; an analyzing device (82) that evaluates whether the signal reaches a specific value or exceeds a specific threshold, the analyzing device (82) causing the electric transmission control (78) to interrupt a positive engagement of the automatic transmission (14) when the specific value is reaches or the specific threshold is exceeded.

It is the examiner's position that Tabata et al anticipates the claimed method because the method is inherently disclosed. The rational for this inherency is that the prior art device would necessarily perform the claimed method.

However, even if not anticipated, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Tabata et al. to include the claimed method. Because the prior art discloses all the structure necessary to perform the claimed functions, one of ordinary skill in the art would find the claimed method to be an obvious step in light of the disclosed structure.

***Allowable Subject Matter***

14. Claims 23, and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes the following: Iijima (U.S. 6,183,391), Welsch et al (U.S. 6,029,511), Suzuki et al (U.S. 6,188,946), Sasaki (U.S. 5,346,032), Takasaki et al (U.S. 5,839,084), Marten et al (U.S. 6,368,250), Matsumo et al (U.S. 6,208,929) disclose a device for increasing security of the vehicle comprising a transmission control is operably connected to a transmission, wherein, the transmission control receiving signal from a plurality of wheel speed sensor to control the transmission.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan To whose telephone number is (703) 306-5951. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson, can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2571. Any inquiry of a general nature or relating to the status of this application or this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.

To, T

October 19, 2003